CHONG CHEE LIONG

v.

PP

COURT OF APPEAL, PUTRAJAYA
LOW HOP BING JCA
ZAINUN ALI JCA
HASAN LAH JCA
[CRIMINAL APPEAL NO: Q-06B-13-2006]
28 JANUARY 2008

CRIMINAL LAW: *Prevention of Corruption Act 1961 - Section 4(c) - Knowingly using documents containing false particulars to mislead principal - Whether accused convicted on uncorroborated evidence of prosecution witnesses - Whether conviction should be set aside*

The appellant was charged in the sessions court on eight counts for offences under s. 4(c) of the Prevention of Corruption Act 1961 for knowingly using documents containing false particulars certifying that maintenance works in the Sampadi Forest Reserve in Sarawak was satisfactorily completed when in fact they were not done. He was convicted on all the charges and was sentenced to 12 months' imprisonment on each charge. The sentences were to run concurrently. On appeal to the High Court, the appellant was acquitted and discharged of four of the eight charges. His appeal against the other four charges was dismissed. Hence, the appellant's appeal. The main issue herein was whether the sessions court judge ('SCJ') had correctly called for the defence, in law and on the facts, at the end of the prosecution case.

Held (allowing the appeal and setting aside all convictions and sentences against the appellant):

(1) As the alleged offences took place in 1995, the standard of proof applicable at the close of the prosecution case was beyond reasonable doubt as stated in *Arulpragasan Sandaraju v PP*. In that case the Federal Court in a majority judgment held that the standard of proof required at the close of the prosecution case, having regard to the statutory formula in s. 180 of the Criminal Procedure Code (as it was then), was beyond reasonable doubt and that called for a maximum evaluation of the evidence tendered by the prosecution. (para 4)

(2) Throughout the trial the evidence of the prosecution's main witnesses ('the said prosecution witnesses') suggested that they did not do any work in the Sampadi Forest Reserve and that they did not appoint any sub-contractor to do the work for them. The suggestion by the defence was that the said prosecution witnesses had carried out the work either by themselves or by their workers or sub-contractors. It was clear that the prosecution could only rely on the evidence of the said prosecution witnesses to prove that they had not done any work in the Sampadi Forest Reserve in order to prove its case against the appellant. The other witnesses called by the prosecution could not support or corroborate their evidence on this material point. (para 21)

(3) The SCJ made a finding that no works had been carried in the Sampadi Forest Reserve. The SCJ believed the evidence of the said prosecution witnesses. However, the SCJ also made a finding that they were accomplices. The SCJ was also aware that there was no corroborative evidence to support their evidence but accepted their evidence after reminding herself of the danger of relying on the uncorroborated evidence of accomplices. The mere fact that a trial court has warned itself about the danger of acting on the uncorroborated evidence of an accomplice does not mean that the conviction is not liable to be set aside. (paras 23, 24 & 25)

(4) The SCJ made a finding that the said prosecution witnesses were not telling the truth when they denied knowledge of the whereabouts of the Sampadi Forest Reserve. They were found to be lying in their evidence and as such it would be unsafe to rely on their uncorroborated evidence. They took active roles in the commission of the offence. They did not lodge any report relating to the matter and they kept a portion of the money to themselves. It followed that the SCJ had misdirected herself in calling for the appellant to enter his defence. He should have been acquitted at the end of the prosecution case. (paras 28, 29 & 30)

Bahasa Malaysia *Translation Of Headnotes*

Perayu telah dituduh di Mahkamah Sesyen dengan lapan pertuduhan di bawah s. 4(c) Akta Pencegah Rasuah 1961 kerana dengan sengaja menggunakan dokumen yang mengandungi maklumat palsu untuk mengesahkan bahawa kerja-kerja penyelenggaraan di Hutan Simpan Sampadi, Sarawak telah siap disempurnakan sedangkan pada hakikatnya kerja-kerja tersebut tidak dibuat. Beliau disabitkan atas semua pertuduhan dan dihukum 12 bulan penjara bagi setiap pertuduhan dengan hukuman berjalan serentak. Di rayuan di Mahkamah Tinggi, perayu telah dibebaskan atas empat dari lapan pertuduhan tersebut, manakala rayuannya terhadap empat pertuduhan selebihnya telah ditolak. Kini perayu merayu seterusnya. Isu utama yang berbangkit adalah sama ada hakim Mahkamah Sesyen ('SCJ'), di sisi fakta dan undang-undang, telah dengan betulnya memanggil pembelaan perayu di akhir kes pendakwaan.

Diputuskan (membenarkan rayuan dan mengenepikan semua sabitan dan hukuman terhadap perayu):

(1) Oleh kerana kesalahan yang didakwakan itu berlaku pada tahun 1995, standard pembuktian yang terpakai di akhir kes pendakwaan adalah di luar keraguan munasabah seperti yang dikatakan oleh *Arulpragasan Sandaraju v. PP*. Di dalam kes itu, Mahkamah Persekutuan melalui keputusan majoriti telah memutuskan bahawa standard pembuktian yang diperlukan di akhir kes pendakwaan, dengan mengambilkira formula statutori s. 180 Kanun Acara Jenayah (sebagaimana kedudukannya ketika itu), adalah di luar keraguan munasabah, sekaligus menuntut suatu penelitian yang maksima terhadap keterangan yang dikemukakan oleh pendakwaan.

(2) Di sepanjang perbicaraan, saksi-saksi utama pendakwaan ('saksi-saksi pendakwaan tersebut') telah menyatakan bahawa mereka tidak melakukan apa-apa kerja di Hutan Simpan Sampadi dan bahawa mereka tidak melantik mana-mana sub-kontraktor untuk melakukan kerja bagi pihak mereka. Pendirian pembelaan adalah bahawa saksi-saksi pendakwaan tersebut telah menjalankan kerja-kerja sama ada secara sendiri atau melalui pekerja-pekerja mereka ataupun melalui sub-kontraktor-sub-kontraktor. Adalah jelas bahawa pendakwaan hanya boleh bergantung kepada keterangan saksi-saksi pendakwaan tersebut

bagi membuktikan bahawa mereka tidak melakukan sebarang kerja di Hutan Simpan Sampadi bagi membuktikan kesnya terhadap perayu. Keterangan mereka berkaitan persoalan ini tidak disokong oleh saksi-saksi lain yang dipanggil oleh pendakwaan.

(3) SCJ telah membuat dapatan bahawa tiada kerja-kerja telah dilakukan di Hutan Simpan Sampadi. SCJ mempercayai keterangan saksi-saksi pendakwaan tersebut. Bagaimanapun, SCJ juga membuat dapatan bahawa mereka adalah rakan sejenayah. SCJ juga menyedari bahawa tiada keterangan sokongan bagi menyokong keterangan-keterangan mereka, namun telah menerima keterangan mereka setelah mengingati dirinya tentang bahaya untuk bergantung kepada keterangan-keterangan rakan sejenayah yang tak disokong. Fakta semata-mata bahawa mahkamah perbicaraan telah memberi amaran terhadap dirinya mengenai bahayanya bergantung kepada keterangan seorang rakan sejenayah yang tidak disokong tidak bermakna bahawa sabitan tidak boleh diketepikan.

(4) SCJ telah membuat dapatan bahawa saksi-saksi pendakwaan tersebut telah tidak bercakap benar bilamana mereka menafikan mempunyai pengetahuan tentang di mana letaknya Hutan Simpan Sampadi. Mereka telah didapati berbohong dalam keterangan mereka dan oleh kerana itu adalah tidak selamat untuk bergantung kepada keterangan tak disokong mereka. Mereka terlibat secara aktif di dalam melakukan kesalahan. Mereka tidak membuat sebarang aduan mengenai hal tersebut dan mereka juga telah menyimpan sebahagian dari wang untuk diri mereka sendiri. Ianya mengikut bahawa SCJ telah tersalah arah akan dirinya dalam memanggil perayu untuk membela diri. Beliau sepatutnya dibebaskan di akhir kes pendakwaan.

Case(s) referred to:
Ah Mee v. PP [1967] 1 LNS 3 ***(refd)***
Arulpragasan Sandaraju v. PP [1996] 4 CLJ 597 FC ***(refd)***
Dato' Seri Anwar Ibrahim v. PP & Anor Appeal [2004] 3 CLJ 737 FC ***(refd)***
Thong Hong Kee v. PP [1952] 18 MLJ 110 ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 180
Evidence Act 1950, s. 32(1)(i)(j)
Prevention of Corruption Act 1961, s. 4(c)

Other source(s) referred to:
Sarkar on Evidence, 14th edn, p 1924

[Appeal from High Court, Kuching; Criminal Appeal No: 42-06-2004-III(II)]

For the appellant - Anthony Tai; M/s Anthony Tai
For the prosecution - Zulqarnain Hassan; AG's Chambers

Reported by Usha Thiagarajah

JUDGMENT

Hasan Lah JCA:

[1] The appellant was charged in the Kuching Sessions Court on eight counts for offences under s. 4(c) of the Prevention of the Corruption Act 1961 that the appellant had knowingly used documents which contained false material particulars, to wit, by certifying that the maintenance works in Sampadi Forest Reserve had been satisfactorily completed when in fact they were not, to mislead his principal. He was convicted on all the charges and was sentenced to 12 months imprisonment on each charge and the sentences are to run concurrently.

[2] The appellant then filed an appeal to the High Court at Kuching against the conviction only. At the High Court the appellant was acquitted and discharged of four of the eight charges. His appeal against the other four charges was dismissed. It is to be noted that the four charges for which his appeal was allowed were in respect of the charges in the Kuching Sessions Court Criminal Case No. 61-4-2000-II and No. 61-5-2000-I and under those charges the offences were alleged to have taken place in 1996. The other four charges whereby his appeal was dismissed were in respect of the charges in case Nos. 61-1-2000-I and 61-2-2000-II and under those charges the offences were alleged to have taken place in 1995.

[3] Arising from the decision of the High Court at Kuching the appellant then filed an appeal to this court against the decision of the learned High Court judge in dismissing the appellant's appeal in respect of the four charges and the Public Prosecutor also filed an appeal against the decision of the learned High Court judge in allowing the appellant's appeal in respect of the other four

charges. However at the outset of the hearing of this appeal before us the learned deputy public prosecutor withdrew the prosecution's appeal. As such this appeal is only concerned with the appeal by the appellant in respect of the four offences that took place in 1995. We heard the appeal on 2 and 3 April 2007 and after hearing the arguments we reserved our judgment.

[4] Before we deal with the facts we would like to mention here that as the alleged offences took place in 1995 the standard of proof applicable in this case at the close of the prosecution case is beyond reasonable doubt as stated in *Arulpragasan a/l Sandaraju v. Public Prosecutor* [1996] 4 CLJ 597. In that case the Federal Court (majority judgment) held that the standard of proof required from the prosecution at the close of its case having regard to the statutory formula in s. 180 of the Criminal Procedure Code (as it was then) was the beyond all reasonable doubt standard of proof which called for a maximum evaluation of the evidence tendered by the prosecution.

[5] The details of the four charges for the purpose of this appeal are as follows:

(1) Criminal Case No. SC-61-1-2000-I

First charge

That you, between 26th April 1995 and 23rd May 1995, at Reforestation & Rehabilitation Unit, Jabatan Perhutanan Negeri Sarawak, Kuching Division, in the State of Sarawak, being an agent of the Government of Sarawak, to wit, Renjer Hutan, Jabatan Perhutanan Negeri Sarawak, did knowingly use a document, to wit, Bill dated 26.4.1995 relating to Service Order No. 988963, a claim for payment by Akin ak Raper amounting to RM8,100.00, for carrying out maintenance works in Compartment No. RC9301 with a total area of 67.5 hectares in Sampadi Forest Reserve, in respect of which the principal was interested, and which said document contains statement which is false in material particulars, to wit, you certified the said maintenance work of Reforestation & Rehabilitation has been satisfactorily completed, when in fact no such work has been done by the said Akin ak Raper which to your knowledge was intended to mislead your principal, and that you have thereby committed an offence punishable under Section 4(c) of the Prevention of the Corruption Act 1961 (Laws of Malaysia Act 57).

Second charge

That you, between 26th April 1995 and 23rd May 1995, at Reforestation & Rehabilitation Unit, Jabatan Perhutanan Negeri Sarawak, Kuching Division, in the State of Sarawak, being an agent of the Government of Sarawak, to wit, Renjer Hutan, Jabatan Perhutanan Negeri Sarawak, did knowingly use a document, to wit, Bill dated 26.4.1995 relating to Service Order No. 988973, a claim for payment by Raper ak Lakie amounting to RM6,300.00, for carrying out maintenance works in Compartment No. RC9306 with a total area of 52.5 hectares in Sampadi Forest Reserve, in respect of which the principal was interested, and which said document contains statement which is false in material particulars, to wit, you certified the said maintenance work of Reforestation & Rehabilitation has been satisfactorily completed, when in fact no such work has been done by the Raper ak Lakie which to your knowledge was intended to mislead your principal, and that you have thereby committed an offence punishable under Section 4(c) of the Prevention of the Corruption Act 1961 (Laws of Malaysia Act 57).

Third charge

That you, between 26th April 1995 and 23rd May 1995, at Reforestation & Rehabilitation Unit, Jabatan Perhutanan Negeri Sarawak, Kuching Division, in the State of Sarawak, being an agent of the Government of Sarawak, to wit, Renjer Hutan, Jabatan Perhutanan Negeri Sarawak, did knowingly use a document, to wit, Bill dated 26.4.1995 relating to Service Order No. 988971, a claim for payment by Ripin ak Raper amounting to RM6,900.00, for carrying out maintenance works in Compartment No. RC9309 with a total area of 58.0 hectares in Sampadi Forest Reserve, in respect of which the principal was interested, and which said document contains statement which is false in material particulars, to wit, you certified the said maintenance work of Reforestation & Rehabilitation has been satisfactorily completed, when in fact no such work has been done by the said Ripin ak Raper which to your knowledge was intended to mislead your principal, and that you have thereby committed an offence punishable under Section 4(c) of the Prevention of the Corruption Act 1961 (Laws of Malaysia Act 57).

(2) Criminal Case No. SC-61-2-2000-II

That you, between 4th May 1995 and 24th May 1995, at Reforestation & Rehabilitation Unit, Jabatan Perhutanan Negeri Sarawak, Kuching Division, in the State of Sarawak, being an agent of the Government of Sarawak, to wit, Renjer Hutan, Jabatan Perhutanan Negeri Sarawak, did knowingly use a document, to wit, Bill dated 4.5.1995 relating to Service Order No. 989501, a claim for payment by Ajan ak Chiku amounting to RM6,096.00, for carrying out maintenance works in Compartment No. RC9303 with a total area of 50.8 hectares in Sampadi Forest Reserve, in respect of which the principal was interested, and which said document contains statement which is false in material particulars, to wit, you certified the said maintenance work of Reforestation & Rehabilitation had been satisfactorily completed, when in fact no such work has been done by the said Ajan ak Chiku which to your knowledge was intended to mislead your principal, and that you have thereby committed an offence punishable under Section 4(c) of the Prevention of the Corruption Act 1961 (Laws of Malaysia Act 57).

[6] It may be convenient at this stage to set out the documents relevant in this case where particular references to them have been made in the four charges:

(a) Bill dated 26 April 1995 ie, exh. P1(3) relating to service order no. 988963 ie, exh. P1(2);

(b) Bill dated 26 April 1995 ie, exh. P3(3) relating to service order no. 988973 ie, exh. P3(2);

(c) Bill dated 26 April 1995 ie, exh. P5(3) relating to service order no. 988971 ie, exh. P5(2);

(d) Bill dated 4 May 1995 ie, exh. P7(3) relating to service order no. 989051 ie, exh. P7(2).

[7] The facts as proved by the prosecution, after having taken into account the cross-examination of the prosecution witnesses by the defence, are as follows. The Sarawak Forestry Department started a reforestation project in 1979 in Sampadi Forest Reserve, Lundu, Sarawak. For the purpose of planting the trees in the said project and the maintenance of the forest the Forestry Department would engage local people as contractors by issuing service order to them each not exceeding RM10,000 in accordance with the

Treasury Instruction. These contractors would be selected by the crew/field leader appointed by the department. In this case the appellant was appointed as the crew/field leader by virtue of a field instruction issued by the department to the appellant who was then a forest ranger. The appellant was assisted by PW10 (Hasbi bin Darahaman) who was a forest guard.

[8] According to the field instruction issued to the appellant which was marked as exh. P20 once the contractor completed the work it had to be inspected by the appellant and payment for the work would only be made after final inspection had been completed. Upon completion of the work, the appellant would prepare a report to be submitted to the State Director of the Forestry Department certifying the completion of the work. The report which was prepared by the appellant and which related to the four charges in this appeal was tendered as exh. P18 whereby he stated that:

(a) the works were undertaken by local contractors; and

(b) that maintenance was started on 27 March 1995 and completed on 3 March 1995, a total of 52 compartments were maintained with a total area of 1633.2 hectares.

[9] On being satisfied that the works were completed a bill would be prepared and that bill had to be countersigned by the team members who had to certify that the work had been satisfactorily completed before payments were made to the contractors. The appellant as the crew/field leader for the project was the main person who had to certify that the works were completed in the bills ie, exh. P1(3), P3(3), P5(3) and P7(3) respectively.

[10] PW1, Akin ak Raper, was a farmer. In his evidence he said that the appellant had approached him and asked him to work for the Forest Department telling him that all that PW1 need to do was to sign the relevant documents. The appellant did not tell him the nature of his work in Sampadi Forest Reserve. The appellant also asked PW1 to get PW1's relatives to do the work. PW1 then gave the particulars of his father, Raper ak Lakie (deceased), his brother Ripin ak Raper (PW2) and his brother-in-law Ajan ak Chiku (PW3) to the appellant. The four of them then signed some documents given by the appellant to them. PW1 signed exh. P1(3)

A and P2(3). According to PW1 all four of them subsequently received some cheques from the District Office in Lundu in 1995. The cheque marked as P12 was received by him. Together they went to the Utama Bank in Lundu to cash the cheques and thereafter, PW2, PW3 and Raper ak Lakie gave their money to
B him for him to give the appellant's share to the appellant as requested by the appellant. PW1 gave the money to the appellant.

[11] PW2, Ripin ak Raper is the brother of PW1. He stated that in 1995 PW1 gave him some blank documents to sign and told
C him that it was for working in Sampadi Forest Reserve without telling him the nature of the job. He signed the bill which was marked as exh. P5(3). He confirmed that he did not do the work mentioned in exh. P5(3). Later he received a cheque marked as exh. P10. The four of them went to Bank Utama to cash the
D cheques after receiving the cheques. PW2 gave the money to PW1. PW2 said that the four of them did not do any work for the Forest Department in 1995 and according to PW2 he had never heard of Sampadi Forest Reserve. PW2 stated under cross-examination that he only received RM300 and the rest of the
E money was given to PW1.

[12] PW3, Ajan ak Chiku, told the court that in 1995 PW1 gave him some documents to sign without telling him anything. He did not know what these documents were for and he did not carry
F out the work mentioned therein. Subsequently the four of them received some cheques in the district office in Lundu and all of them went to cash the cheques. PW2, Raper ak Lakie (deceased) and PW3 gave the money to PW1. Under cross-examination, PW3 said that he did not know where Sampadi Forest Reserve was.

G **[13]** Through PW1 also the prosecution adduced the death certificate of Raper ak Lakie which was marked as exh. P17(a). Pursuant to s. 32(1)(i)(j) of the Evidence Act 1950 the prosecution tendered two statements made by the deceased in the course of the investigation and they were marked as exh. P25 and
H P28 respectively. In exh. P25 the deceased stated that in April 1995 PW1 told the deceased that PW1 wanted to use his name and the names of the family members for getting a contract work in Sampadi Forest Reserve and the deceased was asked to sign some documents in April 1995. The deceased did not do any work
I in Sampadi Forest Reserve after that. However a few months later which was between June and July 1995 PW1 showed the

deceased the cheques in respect of the maintenance work in Sampadi Forest Reserve. PW1, PW2, PW3 and the deceased went to cash the cheques at the bank and according to the deceased the appellant was with them in the bank. After that they, including the appellant, proceeded to a coffee shop for a drink and in the coffee shop the deceased, PW2 and PW3 handed all their money to PW1 in the presence of the appellant. They later returned to their homes. According to the deceased a few hours later PW1, the appellant and a Chinese driver arrived at PW1's house and the deceased saw PW1 giving an envelope wrapped in a newspaper to the appellant.

[14] PW10, Hasbi bin Darahaman, was a forest guard with the Forest Department. It was his responsibility to supervise workers, to give instructions relating to the works and to inform the officers in charge about the completed works. He was one of the signatories on the bills marked exh. P1(3), P3(3), P5(3) and P7(3). According to him he signed these bills without inspecting the area because his supervisor, the appellant, asked him to sign the documents and told him that the works in the compartments stated therein had been completed and he trusted the appellant. He and the appellant were supposed to inspect the works mentioned in the bills but he did not do it and he did not know whether the accused did the inspection. He gave two reasons as to why he could not decline signing those bills. First, because he was instructed by his higher authority, namely the Assistant Director of the Forestry Department of Sarawak, Jawa anak Kandawang (PW12), to do so and second, because the appellant, who was his supervisor, had instructed him to sign.

[15] Under cross-examination he agreed that it was his duty to sign those bills and it was not because of any instruction given by the appellant. At the end of each field trip he would prepare a "Laporan Harian Kerja Lapangan" (exh. D2 (a-d)) to make his claim and he said that the content in his "Laporan Harian Kerja Lapangan" (exh. D2 (a-d)) in respect of his claim for the supervision of maintenance work in Sampadi Forest Reserve for the period from 21 March 1995 to 3 May 1995 was 100% correct.

[16] PW11, Alexander ak Vincent, was the head of the Plantation Unit in the Reforestation and Rehabilitation Branch in Sarawak Forestry Department in 1995 and 1996. According to

A him all field crew must submit field reports for the purpose of informing the superiors of the progress of work and the problems encountered on the ground. It was his responsibility to check those reports. With regard to the reports for 1995 (exh. P18 (1-10)) prepared by the appellant he found there was no problem
B on the ground. PW11 was one of the signatories on P1(3), P3(3), P5(3) and P7(3). He signed these documents based solely on the field reports submitted by the appellant. He had no personal knowledge whether actual work had been carried out because he did not inspect them.

C

[17] Under cross-examination PW11 stated that he certified those bills based on the report by the appellant and PW10. Apart from the field reports, there were spot checks made to check that the works were properly carried out in the various compartments. He
D denied that he had instructed PW10 to certify those bills. On the appointment of workers or contractors for the work PW11 said that recruitment of works was done at the base camp and a crew leader could appoint contractors subject to the approval of other crew members. The selected contractors' names would be
E submitted to the assistant director. He said it was not illegal for a contractor to sub-contract his work. What was important to the department was that the job was in fact carried out. It was also common and not wrong for the crew leader to help the contractors to prepare the bills because most of them were
F illiterate.

[18] PW12, Jawa ak Kandawang was the Assistant Director of Reforestation of the Sarawak Forestry Department. The field instruction for March/April 1995 (exh. P20 (1-4)) was issued by
G him to the appellant who was the crew leader. PW12 certified the bills after his Plantation Officer had endorsed the appellant's field reports. Under cross-examination he said the recruitment of the contractors should be done at the base camp but the crew leader could either invite the contractors to come to the base camp or
H go to the kampong to look for the contractors. He agreed that the accused, on his own, would not be able to cover the whole area and he would need the assistance of his crew members. PW12 further said that before he certified those bills he satisfied himself that the works had been done by relying not only on the
I field report submitted by the appellant but also by PW10 and the spot check officer.

[19] PW13, Salleh ak Mit, was a Forest Officer who had served in the Research Division, Reforestation Unit, Forest Department in 1995. One of his duties was to do spot checks and prepare inspection reports after inspection. Exhibit P23 was his report dated 15 April 1995 whereby he stated that the work was satisfactorily carried out without any problems. It was based on what was told by the appellant as well as his own random inspection. He did not inspect all the compartments and as such he would not know if work in certain compartments were not carried out. Under cross-examination he said that the works in the compartments inspected by him were in progress. His remark in his report that "Kerja-kerja penyelengaraan di Hutan Simpanan Sampadi yang diketuai oleh FR Chong Chee Liong berjalan dengan sempurna dan memuaskan tanpa sebarang masalah" was a fair and an accurate report. In re-examination he said that for his inspection he had to be led by the appellant to do his random inspection. He asked the appellant to accompany him to the compartments he wanted to visit.

[20] Before us the decision of the learned Sessions Court judge was attacked on several grounds. Those grounds can be grouped into two main categories, namely, that the learned Sessions Court judge was wrong to call for the defence at the end of the prosecution's case and that the learned Sessions Court judge had misconstrued the gist and essence of the appellant's defence and misdirected herself when she found that the appellant's defence was a mere denial. We do not intend to consider all the objections raised by the learned counsel for the appellant. It will suffice if we deal with the more serious objections. In this judgment, we will first consider whether the learned Sessions Court judge had correctly, in law and on the facts, called for the defence. If she had not, it would not be necessary for us to consider the points raised by the learned counsel for the appellant relating to the appellant's defence as the appellant is entitled to an acquittal. However if we agree with the learned Sessions Court judge's finding at the close of the case for the prosecution we will consider the other points raised by the learned counsel with regards to the learned Sessions Court judge's finding on the appellant's defence.

[21] It is to be noted that throughout the trial the evidence of the prosecution main witnesses namely, PW1, PW2 and PW3, and the statements of Raper anak Lakie suggested that they did not do any work in Sampadi Forest Reserve and they did not appoint any sub-contractor to do the work for them. The suggestion by the defence was that PW1, PW2, PW3 and Raper had carried out the work there either by themselves or by their workers or sub-contractors. From the evidence adduced by the prosecution it is clear that the prosecution could only rely on the evidence of PW1, PW2 and PW3 and also the statements of Raper to prove that they had not done any work in Sampadi Forest Reserve in order to prove its case against the appellant. The other witnesses called by the prosecution could not support or corroborate their evidence on this material point. PW10, whose responsibility was to supervise the workers and the works and who signed those bills clearly said he did not inspect the area when he signed those bills even though it was a requirement that he should have inspected the area first to make sure that the works were done in those compartments before he signed those bills. The other person who signed those bills besides PW10 and the appellant was PW11. He relied on the reports submitted by the appellant and he had no personal knowledge whether works had been carried out in the compartments mentioned in those bills when he signed them.

[22] PW12 was the fourth signatory to those bills. He relied on the reports submitted by the appellant, PW10 and the spot check officer which means he also had no personal knowledge whether works had been carried out in those compartments. The last person who could have confirmed whether works had been carried out therein was PW13, the spot check officer. Unfortunately he too was unable to know whether works had been done in those compartments as he did not inspect all the compartments. In fact he did not say in his evidence whether he had inspected the compartments mentioned in those bills.

[23] Having carefully considered the evidence of the witnesses for the prosecution the learned Sessions Court judge made her finding that no works had been carried out in the compartments mentioned in those bills. This means she believed the evidence of PW1, PW2 and PW3 and the statements of Raper. This is what she said in her judgment:

So, was it a case of some works being carried out but not 100% completed or was it a case of no work being carried out at all? PW1, PW2, PW3 and Raper anak Lakie (Deceased) all claimed that they did not do any maintenance work in SFR as per the said eight bills. PW1, PW2 and PW3 had disagreed to the defence suggestion that PW1 had sub-contracted the work and got others to do the work for him. To my mind, if PW1, PW2, PW3 and Raper anak Lakie (Deceased) had truly carried out the work either by themselves, or sub-contract it out, given that they had been duly paid by the Forest Department, why would they claim that they did not do the work? It just does not make any sense for them to deny the doing of work if they had indeed done so. There is no suggestion that there were grudges between them and the said four persons are taking their vengeance by falsely implicating the accused. I therefore believe them that they had never worked in the compartments in the period named in the eight bills (P1(3) to P8(3)). This being the case, it is impossible that for workers to be seen coming in out of the compartment mentioned in P1(3), P3(3), P5(3) and P7(3) as alleged by PW10."

[24] There is one aspect of this case that troubles us when the learned Sessions Court judge acted on the evidence of PW1, PW2, PW3 and the statements of Raper. It is this. They were accomplices and the learned Sessions Court judge has made this finding when she said:

I find that *Amri bin Abdullah*'s case is distinguishable from the present case in that the said four persons in the present case had knowingly given their personal particulars to the accused for work in the Forestry Department which they knew they from the start did not have to do, all they need to do was to sign some documents in blank and wait for the cheque, cash it and give the money to the accused. They each signed bills in blank to facilitate the claim for payment for the works which they knew they did not do. They must have been fully aware of the illegality of this arrangement. This is reflected in PW'1 testimony in cross-examination where he said "my said three relatives agreed to let their names to be used so that it would be easier for us to negotiate and that the matter would not be spread around." (page 15 line 7-8 of the notes of proceedings). To my mind they had all taken an active part in an unlawful scheme than mere giving of their names to the accused, thus they are accomplices.

Under section 114(b) of the Evidence Act, an accomplice is seen as unworthy of credit unless he is corroborated in material particulars while under section 133 thereof, he is regarded as a competent witness against an accused person and a conviction is

A not illegal just because it proceeds on the uncorroborated evidence of an accomplice. Reading both sections together, the cases have interpreted accomplice evidence as requiring corroboration as a matter of practice or prudence although as a matter of law, a direction must be given that it is unsafe to convict on accomplice evidence without corroboration.

B

Having heard and seen the PW1, PW2, PW3 and considered the circumstances, I find them to be credible witnesses albeit my earlier finding that their denial of the knowledge of the whereabouts of SFR is not credible. My reason for believing them
C is very simple, and as I have said earlier in my judgment, if the said four persons had carried out the work as per the eight bills and got paid accordingly, they could have just said so and there would be no current charges. In so denying having done the work, they had to come to court as witnesses and viewed as accomplices to an unlawful scheme, why would they put
D themselves to all these? There is no suggestion that they were seeking vengeance on the accused. I find their evidence to be credible evidence, albeit uncorroborated, as accomplice cannot corroborate each other. I believe and accept their evidence after reminding myself of the danger of relying on uncorroborated
E evidence of the accomplices.

[25] It is also clear that the learned Sessions Court judge was aware that there was no corroborative evidence to support the evidence of PW1, PW2, PW3 and the statements of Raper that
F they did not do any work in the compartments mentioned in the four bills. She accepted their evidence after reminding herself of the danger of relying on the uncorroborated evidence of the accomplices. The mere fact that a trial court has warned itself about the danger of acting on the uncorroborated evidence of an
G accomplice and convicted the accused does not mean that the conviction is not liable to be set aside. In *Thong Hong Kee v. Public Prosecutor* [1952] 18 MLJ 110 Storr J said:

Whilst an appellate court will always hesitate to overrule the decision of a trial judge based upon the demeanour of witnesses
H whom he had the opportunity of seeing in the witness-box, I think in the circumstances of this case it was unsafe to convict the appellant upon the uncorroborated evidence of the complainant who was an accomplice.

[26] The learned High Court judge did not consider this
I important issue of law in her judgment.

[27] In *Dato' Seri Anwar Ibrahim v. PP & Anor Appeal* [2004] 3 CLJ 737 Abdul Hamid Mohamad FCJ (as he then was) has referred to several cases on the evidence of the accomplices and corroboration and at pp. 787 and 788 the learned judge said:

> In the circumstances, is it safe to convict the appellant on Azizan's evidence alone? No doubt Azizan has been consistent in admitting the incident at Tivoli Villa despite the shame that would have been caused to him by such admission though made years later, but we are doubtful as to when it happened and his purported role as the innocent victim therein. As such we are really in no position to say that his story is unusually convincing nor can we find any reason to give it special weight that warrants a conviction to be recorded on his evidence alone. We do not think it is safe to convict on his evidence alone. Furthermore, the offence is a sexual offence. Even though a conviction founded on the uncorroborative evidence of the complainant is not illegal provided that the presiding judge warns himself of the danger of convicting on such uncorroborated evidence (see *Chin Nam Hong v. PP* [1965] MLJ 40, it is unsafe to convict on an uncorroborated testimony of the person on whom the offence is said to have been committed unless for any special reason that testimony is of special weight – see *Ganpart v. Emperor* AIR [1918] Lab. 322 and *Bal Mukundo Singh v. Emperor)* [1937] 38 Cr. LJ 70 (Cal.).
>
> In this respect, our discussion and conclusion regarding corroborative evidence in support of the evidence of an accomplice and in respect of Azizan's evidence is applicable. On this ground too it is unsafe to convict the appellants on Azizan's uncorroborated evidence alone.

[28] Similarly in the instant case is it safe to convict the appellant on the uncorroborated evidence of PW1, PW2, PW3 and Raper? It is to be observed that the learned Sessions Court judge has made a finding that PW1, PW2 and PW3 were not telling the truth when they denied knowledge of the whereabouts of Sampadi Forest Reserve. In *Ah Mee v. Public Prosecutor* [1967] 1 LNS 3, the appellant had been convicted of rape. The trial judge considered that the complainant's credibility was unimpeached and he stated that he was personally impressed by her demeanour. He thought her evidence consistent throughout and held that her evidence of rape was amply corroborated. The Federal Court held that in view of the inconsistencies in the evidence of the complainant it was unsafe to rely on her uncorroborated evidence and therefore the conviction must be set aside. In the instant case

PW1, PW2 and PW3 were found to be lying in their evidence and as such we are of the view that it would be unsafe to rely on their uncorroborated evidence.

[29] In *Sarkar on Evidence*, 14th edn, at p. 1924, the following reasons are given as to why the accomplice evidence is unreliable:

> The principal reasons for holding accomplice evidence to be untrustworthy, are: (1) because an accomplice is likely to swear falsely in order to shift the guilt from himself; (2) because an accomplice being a participator in crime, and consequently an immoral person, is likely to disregard the sanction of an oath; (3) because an accomplice gives his evidence under the promise of a pardon, or in the expectation of an implied pardon; if he discloses all he knows against those with whom he acted criminally, and this hope would lead him to favour the prosecution [per SCOTT J, in *R v. Maganlal*, 14 B 115; *Md Usaf v. R*, A 1929 N 215].

These reasons are applicable in the instant case as PW1, PW2, PW3 and Raper took active roles in the commission of the offence. They did not lodge any report relating to the matter and they kept a portion of the money to themselves.

[30] For all the above reasons we are of the view that the learned Sessions Court judge has misdirected herself in calling for the appellant to enter his defence. He should have been acquitted at the end of the case for the prosecution. In view of our finding we do not think that it is necessary for us to consider the other points raised by the learned counsel for the appellant relating to the finding made by the learned Sessions Court judge on the defence's case. We therefore allow the appeal by the appellant and set aside all the convictions and sentences.